

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,278

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her ANFC benefits based on excess family income. The issue is whether the Department correctly included the income of the petitioner's child's father when calculating her eligibility for benefits.

FINDINGS OF FACT

1. The petitioner lives with her three children and a male companion. Two of her children are from a prior marriage. Her youngest child is also the child of her current male companion.
2. The petitioner has been receiving ANFC benefits in the amount of \$616 per month for some time and was randomly assigned to recipient "Group Three" under the new "welfare restructuring project". Shortly after her third child was born, the Department recalculated the petitioner's benefits by including both the new child and his father in the assistance group.
3. On December 2, 1994, the Department mailed the petitioner a notice stating that she would no longer be eligible for ANFC benefits effective December 16, 1994, because her family's income is in excess of Departmental standards. The Department calculated the petitioner's eligibility by using a monthly gross earned income figure of \$1,663.46 from her male companion's wages (which reflects credit for child support amounts he is currently paying out for another child) and deducting from that amount \$30 and one-third of the remainder (\$528.36) as an earned income disregard. The remainder, \$1,135.10, was compared to the basic needs standard for five plus their shelter expense for a total of \$1,386. Although that basic need figure is more than the family's countable ANFC income, the Department can only pay 56.7% of that basic figure or \$785.86. As the assistance group's countable income exceeds that amount they were determined to be ineligible for assistance payments.
4. Although the petitioner agrees that the income and shelter figures used by the Department are correct,

she disagrees with the decision because it, in effect, requires her male companion to provide support for her two older children who are not related to him. She has an outstanding child support order for \$441.60 against her former husband which she claims he is not paying and which she says the Office of Child Support Enforcement is not making any effort to collect.

5. The petitioner's male companion is employed full-time and earns what the Department has characterized as a "substantial income". He has not applied for ANFC assistance as an unemployed parent. He provides support for the child born of the relationship with the petitioner.

### ORDER

The decision of the Department is affirmed.

### REASONS

On July 1, 1994, the Department implemented the "Welfare Restructuring Project", a demonstration project which randomly divides recipients into three groups with different eligibility requirements in certain areas, including work requirements, in order to compare the outcomes and determine which methodology will "enable more ANFC families to achieve self-sufficiency by strengthening families and increasing parental responsibility, by rewarding work and promoting self-support, and by putting a limit on how long families can receive welfare before a parental work obligation begins." W.A.M. 2208.1.

The petitioner was randomly placed in "Group 3" status. Under the restructuring regulations, Group 3 would

. . . have its eligibility for and amount, if any, of ANFC benefits and Reach Up requirements (including the requirement to accept unsubsidized or subsidized employment) determined according to policies designated herein as applying to Group 3 and to all other policies contained herein that are not superseded by the policies that apply to Group 3. Requirements relating to the Reach Up program that were in effect on June 30,

1994, and have not been changed or eliminated by rule subsequent to that date remain in effect for assistance groups assigned to Group 3.

W.A.M. 2208.1(3)

On December 1, 1994, five months following implementation of this restructuring project, the regulations defining "assistance group" for ANFC purposes were revised to read as follows:

An "assistance group" is defined as one or more individuals whose requirements, income and resources are considered as a unit to determine need for ANFC.

An ANFC assistance group must include one or more eligible dependent children. In addition, the assistance group must include all siblings (including half-siblings) who live with the dependent child or children, who meet one of the deprivation factors according to WAM 2330-2339 and who qualify under the ANFC age criteria, as defined in policy. (1) If the family assignment is Group 2 or 3, a child is considered an eligible dependent child under the unemployment deprivation factor, even if one or both

parents are employed full time. The parent(s) of each

child included in the ANFC assistance group must be included in the ANFC assistance group if he or she lives in the home with the children.

W.A.M. 2242

(emphasis supplied to show revisions)

Under regulations formerly in existence, the petitioner and her companion's common child could not be included in the ANFC group unless one of the criteria in footnote one was met. See W.A.M. 2242, effective July 1, 1994, Bulletin No. 94-12. This is still true for persons placed in Group One. However, those in Groups 2 and 3 are exempted from the above criteria. The regulations defining "unemployed parent" were also revised on December 1, 1994, to further underscore the change:

An unemployed parent is either a parent in Group 1 whose minor children are in need because he or she is not working at all or is working part time or a parent in Group 2 or Group 3 who is working full time, part time, or not at all . . .

W.A.M. 2333.1

The regulations most recently adopted have, in effect, waived the definition of deprivation formerly found in the regulations and broadened the category of unemployed parents to include fully employed parents for recipients who are in Group 2 or Group 3. The petitioner, as a member of a Group 3 family, must include all of her children in her ANFC assistance group including her child who is actually being supported by his working father. Under the regulation cited at W.A.M. 2242 above, that child's father must also be included in the assistance group as long as he is living in the home with the children. The Department's decision to include the petitioner's youngest child and his father in the group as well as their income was consistent with its revised regulations.

The petitioner has been advised with regard to her concerns on child support collection that she has a right to request a review of her situation by the Office of Child Support Enforcement and a right to appeal any determination with which she is dissatisfied to the Human Services Board thereafter.

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1. Eligibility for ANFC requires establishing that a child is deprived of parental support or care for one of the following reasons and that the income and resources available to the parent in custody of the child and the child are insufficient to meet the child's total needs according to Department standards:

1. Death of a parent;
2. Continued absence of a parent;

3. Physical or mental incapacity of a parent;

4. Unemployment - (ANFC-UP).

W.A.M. § 2330